



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

SUBJECT: PER-Employee Participation in NRCS Programs or NRCS Assisted Programs Date: June 24, 2003

TO: Deputy Chiefs
Regional Conservationists

File Code: 360-16-11

This memorandum provides specific direction regarding actions that must be taken to avoid a conflict of interest when an employee applies to participate in a Natural Resources Conservation Service (NRCS) program or NRCS-assisted program.

What Employees Must Do

The amended Farm Bill Programs demand a greater transparency. Employees must understand the rules and requirements in situations where conflicting interests are present. Disqualification to avoid conflicts or interests, or the appearance of impartiality, is the responsibility of the individual employee.

1. An employee must not participate in any particular matter involving specific parties, as part of NRCS duties, if that matter will have a direct and predictable effect on the employee's financial interest; or the interest of the employee's spouse, minor child, outside employer, perspective employer, an organization in which the employee serves as an officer, general partner, etc. [See 5 CFR 2635.402]
2. An employee may not participate in any particular matter involving specific parties, as part of NRCS duties, where the matter is likely to have a *direct and predictable effect* on the financial interest of a member of the employee's household, or where the employee knows that a person with whom the employee has a "covered relationship" is or represents a party to such matter, where the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter. [see 5 CFR Part 2635.502.]

An employee who becomes aware of the need to disqualify him or herself from performing official duties should notify his or her supervisor, in writing. An employee seeking ethics guidance should contact his or her servicing ethics advisor.

An employee who applies (or plans to apply) to participate in an NRCS program must not perform pre-contract functions with respect to competing applications, or any substantive function with respect to the employee's own application, unless issued an exception to the disqualification requirements, as explained below.

The attached *Technical Assistance Matrix for Ethical Program Delivery* will assist employees and supervisors at all levels to better understand the impact of these requirements when employees participate in NRCS programs or NRCS-assisted programs. The attached chart lists

major NRCS functions involved in servicing program applicants, and reflects the minimum extent to which an NRCS employee, *who has applied to participate in an NRCS program in a personal capacity*, is disqualified from performing substantive *NRCS functions in their official NRCS capacity*. The minimum levels listed on this chart are based on either, or both, the Standards of Ethical Conduct for Employees of the Executive Branch (See 5 CFR Part 2635), or NRCS policy and internal controls designed to protect the integrity of NRCS programs and services.

The geographic scope from which an NRCS employee *who applies to participate in an NRCS program* must be disqualified, and not perform substantive work in an official capacity with respect to the employee's own or *competing applications* (or other particular matters involving specific parties) varies by NRCS program. It is based on whether the particular matter will have a *direct and predictable effect* on the interest of the employee-applicant. For example, in States where Environmental Quality Incentives Program (EQIP) dollars are competed for by county, then the minimum extent of disqualification from performing pre-contract NRCS functions is county-wide. In States where EQIP dollars are competed for on a State-wide basis, then the minimum extent of disqualification from performing pre-contract NRCS functions is State-wide. The extent of disqualification in the same State may vary by program, based on how the various program dollars are set aside for competition by competing operations. The extent of disqualification required in the case of a headquarters, regional office, or State office employee who applies to participate in an NRCS program might not necessarily be different from that for a field office employee.

Ultimately, the extent of disqualification that must be required is determined based on whether the employee's duties involve substantial involvement in a particular matter involving specific parties, in which the matter will have a direct and predictable effect on the employee's interest.

Example 1: Richards, an Area Conservationist over three counties, farms in one of the counties in her area and applies to participate in EQIP. Richards must not be allowed to work on any EQIP applications with which Richards is competing during that same signup for EQIP program dollars. In this State, operations compete for EQIP funding by county, which means that Richards must not process applications in the same county in which Richards farms. However, Richards may perform her regular duties for program applicants during that same signup in the other two counties in her area.

Example 2: Same as Example 1, above, but this time it is in a State in which operations compete State-wide for EQIP funding. Therefore, in this revised example, Richards would be disqualified State-wide from performing substantive NRCS duties with respect to EQIP applicants for the same signup.

Example 3: A State Conservationist (STC) who farms in the same State and applies to participate in EQIP may need to be disqualified from official participation in matters related to that EQIP signup State-wide. The STC would be disqualified from participating in particular matters involving specific parties if the matter will have a direct and predictable affect on the STC's interest. If, however, a particular matter involving specific parties will not have *direct and predictable effect* on the STC's own

interest or those of another whose interest is imputed to the STC or those of a person or organization with whom the STC has a covered relationship, then the STC would not be disqualified from official participation in the matter.

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What Supervisors and Managers Must Do

NRCS managers have long recognized that these rules require an employee be disqualified from performing NRCS duties on the employee's own participating operation, or that of the employee's spouse or child. However, additional disqualification from participation in NRCS duties is required when an employee participates in an NRCS program.

It is your responsibility to effectively manage NRCS programs and human resources while ensuring compliance with the conflict of interest provisions when, to your knowledge, an employee is participating in an NRCS program. To do this, you will:

- a) Ensure that supervisors make appropriate adjustments in work assignments to avoid conflicting interest. Disqualification, as required by 5 CFR Part 2635.402(a) and 502(a), remain the employee's responsibility. Supervisors must not tell employees to ignore these requirements. However, the Assistant Designated Ethics Officials (DEOs) and Deputy Chiefs are delegated the authority to make a different determination pursuant to 5 CFR 2635.502(c) and to direct an employee not to disqualify him or herself, accordingly. Upon request of the employee, any such determination must be put in writing, and a copy given to the employee. This authority may not be re-delegated *except to* State Conservationists upon determination by the Assistant DEO that the State ethics advisor possesses sufficient expertise to adequately assist the State Conservationist to fully comply with the requirements for issuing such authorizations.
- b) Exercise the responsibility and authority as the Agency Designee regarding impartiality determinations and authorizations pursuant to 5 CFR Part 2635.502(c) and (d), respectively, as explained below.
- c) Exercise authority to make *determination(s) of substantial conflict* pursuant to 5 CFR 2635.403(b), as explained below.

Disqualified Requirements and Exceptions

Disqualification to avoid conflicting interests is the responsibility of the individual employee with the personal interest at issue. Supervisors must not tell employees to ignore these requirements.

¹ The DEO is the Deputy Chief for Management. Each Regional Conservationist is an Assistant DEO.

The NRCS Designated Ethics Official (DEO)¹ has authority to issue a 208(b) waiver of the criminal statute provision; and the Associate Chief, Deputy Chiefs, and Assistant DEOs have authority to make certain ethics determinations regarding the impartiality provisions at 5 CFR 2635.502. The provision at 502(c) and delegated authority provide Assistant DEOs and Deputy Chiefs the authority to make a different determination from that of the employee regarding impartiality issues (not applicable to conflict of interest issues). This could result in your giving direction to the employee not to disqualify him or herself pursuant to the provision at 5 CFR 2635.502(c). Upon request by the employee, any such determination must be put in writing and a copy given to the employee. This authority may not be re-delegated *except to* State Conservationists upon determination by the Assistant DEO that the State ethics advisor possesses sufficient expertise to adequately assist the State Conservationist to fully comply with the requirements for issuing such authorizations.

Ethics regulations provide limited authority for NRCS to authorize certain exceptions to the disqualification requirements. No exemptions shall be issued except upon determination by the NRCS official with delegated authority to issue such exception that all requirements of the Office of Government Ethics (OGE) for such exemption have been met.

- Authority to issue waivers to the criminal conflict of interest statute under 18 USC 208(b)(1) or 5 CFR 2635.605(a) is delegated to the NRCS DEO and also retained by the Associate Chief. [See 5 CFR Part 2635.402(d)(2).] As required, when practical the Agency Ethics Official will consult with the OGE prior to granting any such waiver. Once issued, a copy of any such waiver is to be sent to OGE under the DEO's signature.
- Deputy Chiefs and Assistant DEOs are the *Agency designees* with authority to issue authorizations pursuant to 5 CFR 2635.502(d). This authority may be used to allow an employee to participate *in a matter that does not violate 18 USC 208(a)* [see 5 CFR Part 2635.402(a)] but that does raise an impartiality question in the mind of a reasonable person, based on a determination, *made in light of all relevant circumstances*, that "the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Agency's programs and operations." Note that an employee's reputation for honesty and integrity is not a relevant consideration in making this determination. [See 5 CFR 2635.502(f).] This authority may not be re-delegated *except to* State Conservationists upon determination by the Assistant DEO that the State ethics advisor possesses sufficient expertise to adequately assist the State Conservationist to fully comply with the requirements for issuing such authorizations. For the benefit of involved employees, we strongly encourage Agency designees to document any such authorization(s) in writing, and to provide a copy to the involved employee.

Authority to Prohibit Personal Program Participation

Deputy Chiefs and Assistant DEOs will exercise the authority to make determinations of substantial conflict for the purpose of prohibiting an employee from participating in an NRCS program pursuant to 5 CFR 2635.403(b). This authority may not be re-delegated *except to* State Conservationists upon determination by the Assistant DEO that the State ethics advisor possesses

sufficient expertise to adequately assist the State Conservationist to fully comply with the requirements for issuing such authorizations. Such authority will allow these officials to address:

- i) Any situation that adversely affects the ability to accomplish our mission because another employee cannot be readily assigned to process applications for the disqualified employee.
- ii) Any situation(s) where an employee, who owns land in the same county served by his/her own field office, will not be able to perform the significant duties of his/her position if they apply for participation.

How to Get More Information

Significant details have been omitted from the summaries of the Conflict of Interest and Impartiality rules. Please review the regulations [Standards of Ethical Conduct at 5 CFR Part 2635.402(a), 502(a) and 702(d)] and take the *Conflicting Interest* training module on the USDA Ethics Website at <http://www.usda-ethics.net>. In reviewing these, you will see that they include significant other provisions that serve to qualify or limit the extent to which the conflicting interest provisions apply. It is essential to correctly apply all elements of these regulatory provisions when applying them to specific situations.

If you still have questions after reviewing the regulations and completing the training, I encourage you to also make a personal appointment with the Agency Ethics Advisor or your Regional Ethics Advisor. Other employees should contact their servicing ethics advisor if they have questions.

Please take steps to ensure that all employees understand this. This information will be incorporated in the General Manual and the Programs Manual. Of you have questions about this memorandum, please contact Caryl J. Butcher, Agency Ethics Advisor, at (301)504-2197.



BRUCE I. KNIGHT
Chief

Attachments

Cc: (w/ attachment)
State Conservationists
Directors, Caribbean and Pacific Basin Areas
Directors, Centers and Institutes
Regional and State Administrative Officers
NHQ Division Directors and Above

TECHNICAL ASSISTANCE MATRIX FOR ETHICAL PROGRAM DELIVERY

This Chart reflects the minimum extent to which an NRCS employee *who participates or has applied to participate in, an NRCS program or NRCS assisted program, is disqualified from performing substantive official NRCS duties with respect to that program.*

PROGRAM FUNCTIONS		EMPLOYEE PERFORM WORK ON OWN PARTICIPATING OPERATION(S)	EMPLOYEE PERFORM WORK WITHIN OWN SERVICE AREA(S)	Required Disqualification
i) National Program Development	AFTER A CONTRACT IS APPROVED	Do not perform if will participate		<p>If an employee must not perform an NRCS function on the employee's own property, then the employee also must not perform that function on property of the employee's:</p> <ul style="list-style-type: none">• Spouse or child;• Relative with whom the employee has a close relationship;• Member of the employee's household;• Business partner;• Employer or perspective employer; and• Spouse's, parent's or minor child's employer. <p>Or, on property of an organization in which the employee is:</p> <ul style="list-style-type: none">• has served within the last year as, an employee, officer, trustee, general partner, contractor, director, or agent; or• Is a committee or subcommittee chairperson. <p><u>Examples</u></p> <p>i) Jones, an NRCS employee, applies for Jones' farm to participate in EQIP in Carroll County.</p> <ul style="list-style-type: none">• Jones must not perform program NRCS functions 1 or 2, or 3-7 for Jones' farm or any of the other farms that are competing during the same EQIP signup in Carroll County.• After the decision is made to approve or disapprove a contract on Jones' farm, Jones may be permitted to perform NRCS duties for functions 8-13 on other properties. Jones may never perform substantive NRCS duties on Jones' own property.
ii) State Program Development		Do not perform if will participate		
iii) Application		Not Allowed to Perform NRCS Duties	Not Allowed to Perform NRCS Duties in competing area	
iv) Eligibility Determination				
v) Ranking				
vi) Fund Obligation				
vii) Contract Approval				
viii) CNMP Plan	Not Allowed to Perform NRCS Duties	Perform Work		
ix) Practice Design	Not Allowed to Perform NRCS Duties	Perform Work		
x) Practice Installation	Not Allowed to Perform NRCS Duties	Perform Work		
xi) Practice Certification (including payment approval)	Not Allowed to Perform NRCS Duties	Perform Work		
xii) Self Certification	Not Allowed to Perform NRCS Duties			
xiii) Status Reviews	Not Allowed to Perform NRCS Duties	Perform Work		

TECHNICAL ASSISTANCE MATRIX FOR ETHICAL PROGRAM DELIVERY

Examples (*continued*)

- ii) A State Conservationist who farms in the same State and applies to participate in EQIP may need to be disqualified from participation in official matters including functions 1-7 for that EQIP sign-up Statewide. In such cases, the required level of disqualification is:
 - Statewide in a State where applicants compete for funding on a State-wide basis
 - Countywide (where operation is located) in a state where the competition for funding is within each county and there is no impact on whether an application may be successful based on decisions to accept or disapprove applicants from other counties.
 - iii) Taylor is a District Conservationist (DC). Taylor also owns a farm that is enrolled under FRPP. The Fairfax Conservancy (TFC) is the easement holder on Taylor's farm. Taylor cannot conduct the Highly Erodible Land (HEL) compliance review on Taylor's own farm. Taylor is also prohibited from conducting HEL compliance reviews on other farms that TFC manages, since TFC is the easement holder of Taylor's property.
- Chart Use and Limitations**
- iv) The Chart on the front of this form reflects the minimum extent to which an NRCS employee who has applied to participate in an NRCS program in their personal capacity, must step aside and not perform substantive NRCS functions in their official NRCS capacity. The minimum levels listed are based on either, or both, the Standards of Ethical Conduct for Employees of the Executive Branch (See 5 CFR Part 2635) or NRCS policy and internal controls designed to protect the integrity of NRCS programs and services. Further disqualification, as may be required by 5CFR 2635, is the responsibility of the employee.

Exceptions

Ethics regulations provide limited authority for NRCS to authorize certain exceptions to the disqualification requirements. No exemptions shall be issued except upon determination by the NRCS official with delegated authority to issue such exceptions, that all requirements for such exemption have been met.

- The NRCS Designated Ethics Official (DEO) has the authority to issue individual waivers under 18 USC 208(b)(1). [See 5 CFR 2635.402(d)(2).] When practical, the Agency Ethics Official will consult with the Office of Government Ethics (OGE) prior to granting any such waiver. Once issued, a copy of any such waiver must be sent to OGE under the NRCS DEO's signature.
- Deputy Chiefs and Regional Conservationists are the agency designees with authority to issue authorizations pursuant to 5 CFR 2635.502(d). This authority may be used to allow an employee to participate in a matter that does not violate 18 USC 208(a) [see 5 CFR Part 2635.402(a)] but that does raise an impartiality question in the mind of a reasonable person, based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Agency's programs and operations. Note that an employee's reputation for honesty and integrity is not a relevant consideration in making this determination. [See 5 CFR 2635.502(f).] This authority may not be re-delegated except to State Conservationists upon determination by the Regional Conservationist that the State Ethics Advisor possesses sufficient expertise to adequately assist the State Conservationist to fully comply with the requirements for issuing such authorizations.
- A waiver for any Agency designee may only be issued by the NRCS DEO, except that a waiver for the NRCS DEO may only be issued by the Chief.
- Authority to issue a waiver for the Associate Chief is reserved to the Chief, personally. Authority to issue a waiver for the Chief is reserved to the Under Secretary or Deputy Under Secretary for Natural Resources and Environment, or the Director, USDA Office of Ethics.